RECORD AND BRIEFS

No. 16-466

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

BRISTOL-MYERS SQUIBB COMPANY,

Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO, *et al.*,

Respondent.

On Writ of Certiorari
to the California Supreme Court

BRIEF OF *AMICI CURIAE* CIVIL PROCEDURE PROFESSORS IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE*

Amici curiae are law professors and legal scholars with expertise in the areas of civil procedure, complex litigation, conflict of laws, and transnational litigation. *Amici* have an interest in the proper interpretation of the constitutional restrictions on personal jurisdiction and their effect on civil adjudication. *Amici* believe that this Court's well-established principles confirm that California courts may permissibly exercise jurisdiction in this case.[1]

SUMMARY OF ARGUMENT

Petitioner Bristol-Myers Squibb argues that specific personal jurisdiction "exists only where the defendant's contacts with the forum *caused* the plaintiff's alleged injuries and the resulting suit." Pet. Br. 17 (emphasis added). This has never been the law. While *general* jurisdiction may be amenable to narrowly defined categories, *specific* jurisdiction is not. Ever since this Court's pathmarking decision in *International Shoe Co. v. Washington*, specific

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[1] All parties have submitted letters granting blanket consent to *amicus curiae* briefs. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. The law schools employing *amici* provide financial support for activities related to faculty members' research and scholarship, which helped defray the costs in preparing this brief. Otherwise, no person or entity has made a monetary contribution intended to fund the preparation or submission of this brief.

jurisdiction has been a far more flexible inquiry into the relationship among the forum, the defendant, and the dispute. This is as it should be. Requiring that specific jurisdiction rest on a strict causal link between the defendant's forum-state contacts and the plaintiff's claims provides no new benefits. Yet it would create uncertainty, risk destabilizing the system of litigation in both state and federal courts, and cast doubt on several of this Court's earlier personal jurisdiction decisions.

The current law, as established by this Court, is well calibrated both to ensure an appropriate forum for lawsuits and to prevent unfairness to defendants. To affirm the decision of the California Supreme Court in this case, the Court need only hold that Petitioner has purposefully availed itself of the privilege of conducting activities in California (which no one disputes), Respondents' claims relate to Petitioner's California contacts (which is barely, if at all, disputed), and California's assertion of jurisdiction is reasonable (which Petitioner has effectively conceded (Pet. App. 35a)). No more need be said.

The purpose of this brief is to explain why Petitioner's proposed causation rule is ahistorical, inconsistent with the principles of personal jurisdiction, potentially destabilizing, and unnecessary to protect defendants from abusive exercises of state power. In short, this Court should decline to adopt Petitioner's proposal and should leave the law on specific jurisdiction unchanged for three reasons.

First, this Court has never relied on a causation requirement to endorse—or reject—a state's exercise of personal jurisdiction over a defendant. In fact, for this Court to do so would be inconsistent with a number of cases in which this Court found—or all involved assumed—that there *was* personal jurisdiction over claims against the defendant that were not caused by its forum-state contacts.

Second, changing course now by adopting a causation requirement would lead to disruptive, inefficient, and unfair results—in both simple and complex litigation, and in both state and federal courts. A new causation test would throw into doubt even chestnuts of the first-year jurisdictional curriculum, like *World-Wide Volkswagen v. Woodson*. And it could wreak havoc with the way courts resolve our most complicated and economically important disputes, like the extensive litigation arising out of the ongoing Volkswagen "Clean Diesel" scandal.

Third, it is unnecessary to take that risk in order to protect defendants from litigating in an unfair forum. Indeed, in this case, Petitioner has not even argued that California is an unfair place to litigate. To the extent that Petitioner's concern is being haled into an inconvenient or distant forum, those concerns are already addressed in this Court's requirement that any exercise of personal jurisdiction be reasonable. And in cases where another court is manifestly more appropriate, defendants may move to transfer the case or dismiss on *forum non conveniens* grounds. To the extent that Petitioner's concerns relate to the law a court applies, such concerns are covered by each state's choice-of-law

rules and the constitutional restrictions on those rules. To the extent that Petitioner's concerns relate to a state's hostility towards out-of-state corporations, such concerns are addressed by diversity jurisdiction. Remedies for any such bias are therefore best left to Congress in defining the right to remove and the subject-matter jurisdiction of the federal courts. Finally, to the extent that Petitioner's concerns are that the cases are being litigated against it at all—as Petitioner candidly admitted before the Court of Appeal[2]—those concerns are not covered by the Due Process Clause.

ARGUMENT

I. Petitioner's Proposed Causation Rule Is Unprecedented.

Ever since *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), this Court has emphasized the need to retain flexibility in the law of personal jurisdiction, including in the minimum-contacts inquiry for specific jurisdiction. The Court has never suggested the strict causation requirement Petitioner seeks here. Indeed, such a requirement would be inconsistent with this Court's longstanding approach to personal jurisdiction.

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[2] Oral Argument at 23:18, *Bristol-Myers Squibb Co. v. Superior Ct.*, 175 Cal. Rptr. 3d 412 (Cal. Ct. App. 2014).

A. Flexibility Is Integral To Specific Jurisdiction.

As *International Shoe* explained, the personal jurisdiction inquiry "cannot be simply mechanical or quantitative." *Id.* at 319. Since that decision in 1945, flexibility has been the hallmark of this Court's specific personal jurisdiction jurisprudence. The Court's regular endorsements of this flexibility have been as colorful as they are numerous. *See, e.g.*, *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 485 (1985) ("[We] reject any talismanic jurisdictional formulas[.]"); *id.* at 486 ("[T]he Due Process Clause allows flexibility in ensuring that commercial actors are not effectively 'judgment proof' for the consequences of obligations they voluntarily assume in other States[.]"); *Kulko v. Cal. Superior Court*, 436 U.S. 84, 92 (1978) ("[T]he 'minimum contacts' test of *International Shoe* is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite 'affiliating circumstances' are present. . . . We recognize that this determination is one in which few answers will be written 'in black and white. The greys are dominant, and even among them the shades are innumerable.'"); *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977) ("Mechanical or quantitative evaluations of the defendant's activities in the forum could not resolve the question of reasonableness[.]"); *Hanson v. Denckla*, 357 U.S. 235, 251 (1958) ("[T]he requirements for personal jurisdiction over nonresidents have evolved from the rigid rule of *Pennoyer v. Neff* . . . to the flexible standard of *International Shoe Co. v. State of Washington*.").

When evaluating "the relationship among the defendant, the forum, and the litigation," *Shaffer*, 433 U.S. at 204, this Court has considered a wide variety of contacts with different relationships to the case at hand, none of which is dispositive. That flexibility has allowed the Court to consider factors such as:

- The plaintiff's contacts with the forum state, *see Calder v. Jones*, 465 U.S. 783, 788 (1984) (noting that plaintiff's contacts "may be so manifold as to permit jurisdiction when it would not exist in their absence");

- The suit's connections to other states, *see Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 775 (1984) ("[I]t is certainly relevant to the jurisdictional inquiry that petitioner is seeking to recover damages suffered in all States in this one suit." (emphasis omitted));

- The forum state's interests in third-party citizens and interstate relations, *see id.* at 777–78 ("[T]he combination of New Hampshire's interest in redressing injuries that occur within the State and its interest in cooperating with other States in the application of the 'single publication rule' demonstrate the propriety of requiring respondent to answer to a multistate libel action in New Hampshire.");

- Market conditions, *see J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 885 (2011) (plurality) (noting that courts may consider "[t]he defendant's conduct and the economic

realities of the market the defendant seeks to serve");

- And other unanticipated factors, *see, e.g.*, *id.* at 891–92 (Breyer, J., concurring in the judgment) (surveying other potential complications if "what has previously been this Court's less absolute approach" were replaced with a "more absolute rule").

This flexibility has allowed the courts to determine the limits and "clarify the contours of" personal jurisdiction through deliberate, case-by-case "judicial exposition" in "common-law fashion." *Nicastro*, 564 U.S. at 885 (plurality); *see also id.* at 891–92 (Breyer, J., concurring). That gradual approach to defining the outer bounds of states' power within our constitutional system is critical for avoiding unintended and potentially significant disruptions of state and federal adjudication.

Indeed, the Court relied on the flexibility of the specific-jurisdiction inquiry when it clarified in *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011), and *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), that general jurisdiction is limited to those forums where the defendant is essentially "at home." *See Daimler*, 134 S. Ct. at 758 n.9 ("'[W]e do not need to justify broad exercises of [general] jurisdiction unless our interpretation of the scope of specific jurisdiction unreasonably limits state authority over nonresident defendants.'" (quoting Mary Twitchell, *The Myth of General Jurisdiction*, 101 HARV. L. REV. 610, 676 (1988)). Adopting Petitioner's strict causation requirement for specific

jurisdiction on top of these more rigid rules of general jurisdiction would abandon the flexibility that has characterized the law of personal jurisdiction since *International Shoe*. *See, e.g.*, *id.* at 757–58 ("[G]eneral and specific jurisdiction have followed markedly different trajectories post-*International Shoe*. Specific jurisdiction has been cut loose from *Pennoyer*'s sway, but we have declined to stretch general jurisdiction beyond limits traditionally recognized.").

The recent shift in the law of general jurisdiction also affects the lessons that can be drawn from the history of specific jurisdiction. Petitioner argues that this Court has looked for a causal nexus when assessing the existence of jurisdiction in every specific-jurisdiction case since *International Shoe*. Pet. Br. 11. Even if that were correct (which it is not, *see Keeton*, 465 U.S. at 775–76, 780), the claim is misleading: For seventy years, cases that might have presented this question were treated as uncontroversial exercises of personal jurisdiction. For example, the defendant in *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985), objected to a Kansas state court's jurisdiction over out-of-state class plaintiffs. But the Kansas court's personal jurisdiction over the *defendant* (a Delaware corporation with its principal place of business in Oklahoma) was uncontroversial, even though the named plaintiffs' claims (based on gas leases they owned in Oklahoma and Texas) did not have any causal connection to the defendant's natural-gas operations in Kansas. *Id.* at 799–801. Moreover, many cases assumed the existence of general jurisdiction under a "doing business" theory without

considering whether specific jurisdiction was available. *See, e.g., Allstate Ins. Co. v. Hague*, 449 U.S. 302, 317 & n.23 (1981) (noting that personal jurisdiction was "unquestioned" where defendant was "at all times present and doing business in" the forum state); *Ferens v. John Deere Co.*, 494 U.S. 516, 519–20 (1990) (noting parties' agreement that defendant "was a corporate resident" of the forum state); *see also Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415–16 & n.10 (1984) (considering only whether the defendant's contacts with Texas gave rise to general jurisdiction).

This is not to suggest that there should have been personal jurisdiction in every one of these cases or that merely "doing business" is an appropriate basis for personal jurisdiction. Rather, the point is that this Court cannot assess the effect of introducing a causation requirement by considering only cases that have been labeled as exercises of "specific jurisdiction," because many cases that were uncontroversial exercises of general jurisdiction before *Goodyear* and *Daimler* would be candidates only for specific jurisdiction today.[3] As Petitioner has noted, this Court has never heard a case that required it to define clearly the scope of "arises out of

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[3] Petitioner conceded this point before the California Court of Appeal. Oral Argument 27:24, *Bristol-Myers Squibb Co. v. Superior Ct.*, 175 Cal. Rptr. 3d 412 (Cal. Ct. App. 2014). ("[T]hese kind[s] of specific jurisdiction arguments have not been filed because jurisdiction historically pre-*Daimler* has always been upheld based on general jurisdiction when you have a company that sells product nationwide and does significant business anywhere.").

or relates to," Cert. Pet. 10, in the context of specific jurisdiction. The absence of such a case should not itself suggest an answer to the question that the Court has repeatedly avoided answering, particularly given the wide variety of cases in which personal jurisdiction has either been found or assumed to exist under *International Shoe*, often without specifying whether that personal jurisdiction should be categorized as general or specific.

B. There Is No Causation Requirement.

More notable is what this Court has *not* said: In seventy years of modern personal jurisdiction analysis, this Court has never stated a requirement that a defendant's in-state contacts must have caused the plaintiff's injuries. Instead it has repeated that a suit must "arise out of or *[be] connected with* the [defendant's] activities within the state." *Int'l Shoe*, 326 U.S. at 319 (emphasis added); *see also Daimler*, 134 S. Ct. at 754; *Goodyear*, 564 U.S. at 923–24; *Nicastro*, 564 U.S. at 881 (plurality); *Burger King*, 471 U.S. at 472; *Helicopteros*, 466 U.S. at 414 n.8.[4]

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[4] In most of the Court's opinions regarding specific jurisdiction that have not mentioned this requirement, the defendant lacked any purposeful contacts with the forum. In such a case, there is no need to consider how the defendant's non-existent contacts might be related to the cause of action. *See, e.g.*, *Walden v. Fiore*, 134 S. Ct. 1115, 1124 (2014) (concluding that the defendant "formed no jurisdictionally relevant contacts with" the forum state); *Rush v. Savchuk*, 444 U.S. 320, 332 (1980) ("[T]he defendant has *no* contacts with the forum."); *Kulko*, 436 U.S. at 94 & n.7; *Hanson*, 357 U.S. at 251, 253. That is not this case.

By consistently phrasing this standard in the disjunctive (arise out of *or* relate to *or* are connected with), the Court has retained limited flexibility to account for cases like *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1983), in which this Court sustained the exercise of personal jurisdiction by "a state court over claims by [an] out-of-state plaintiff[] alleging out-of-state injuries from acts committed outside the forum State." U.S. Br. 15. In *Keeton*, New Hampshire lacked general jurisdiction over Hustler, an Ohio corporation with its principal place of business in California, *see* 465 U.S. at 779, but Hustler's regular business in New Hampshire was nonetheless "sufficient to support [specific] jurisdiction [over injuries sustained in other states] when the cause of action arises out of the very activity being conducted, *in part*, in New Hampshire," *id.* at 780 (emphasis added). Petitioner's proposed causation rule is inconsistent with the analysis in *Keeton*. *See also* Resp. Br. 24–27.

At the same time, just because this analysis has remained flexible does not mean that it is unpredictable. *Compare* Pet. Br. 27–30. For one thing, this Court has expressly incorporated predictability into the minimum-contacts inquiry. Specific jurisdiction requires that "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen*, 444 U.S. at 297; *accord Calder*, 465 U.S. at 790; *Burger King*, 471 U.S. at 474. Similarly, this Court has required that the defendant "purposefully avails" itself of the forum state, *Burger King*, 471 U.S. at 475

(quoting *Hanson*, 357 U.S. at 253); *Nicastro*, 564 U.S. at 877, 88–91 (plurality), and has declined to find jurisdiction based on "random, fortuitous, or attenuated contacts," *Walden v. Fiore*, 134 S. Ct. 1115, 1123 (2014), or the "unilateral activity of another party or a third person," *Helicopteros*, 466 U.S. at 417; *accord Walden*, 134 S. Ct. at 1123; *Burger King*, 471 U.S. at 475. This requirement of *purposeful* contacts with a forum that also *relate* to the cause of action—even without a strict causation requirement—ensures a defendant will have "clear notice that it is subject to suit there" and allow it "to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State." *World-Wide Volkswagen*, 444 U.S. at 297.

It was, of course, entirely predictable that plaintiffs who claim to be injured by Plavix would sue Petitioner in California—the state in which it sold over 180 million Plavix pills from 2006–2012. Pet. App. 4a–5a. As the California Supreme Court explained, "[o]n the basis of [its] extensive contacts relating to the design, marketing, and distribution of Plavix, BMS would be on clear notice that it is subject to suit in California concerning such matters." Pet. App. 25a.

II. Petitioner's Proposed Causation Rule Would Be Disruptive In Both Simple And Complex Litigation.

Petitioner's proposed causation rule would not just be novel and unprecedented. It would be deeply

unsettling to accepted practice in both simple and complex cases, in both state and federal courts. Upending the law as Petitioner urges would cause litigation about jurisdiction to proliferate regarding the cascade of new questions spawned by Petitioner's new rule. These complications, moreover, do nothing to further the values of federalism, predictability, and fairness that have driven this Court's specific jurisdiction jurisprudence.

A. Petitioner's Proposed Causation Rule Does Not Ensure Predictability Or Administrability In Personal Jurisdiction.

Petitioner suggests that a causation test—in particular a proximate-cause requirement—"ensures predictability and administrability." Pet. Br. 13. Petitioner is wrong. Any first-year law student can attest to the difficulty of defining "proximate cause." *See, e.g., Palsgraf v. Long Island R. Co.*, 162 N.E. 99 (N.Y. 1928). As the courts have noted in other contexts, "the principle of proximate cause is hardly a rigorous analytic tool." *Blue Shield of Virginia v. McCready*, 457 U.S. 465, 478 n.13 (1982); *see also id.* at 478 (referring to the concept of proximate cause as "elusive"); *McBride v. CSX Transp., Inc.*, 598 F.3d 388, 393 n.3 (7th Cir. 2010), *aff'd*, 564 U.S. 685 (2011) ("The term 'proximate cause' does not easily lend itself to definition."); W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 41 at 263 (5th ed.1984) ("There is perhaps nothing in the entire field of law which has called forth more disagreement, or upon which the opinions are in such a welter of confusion [as defining 'proximate cause'].

Nor, despite the manifold attempts which have been made to clarify the subject, is there yet any general agreement as to the best approach." (footnote omitted)). To import such a problematic standard to the law of personal jurisdiction would serve only to complicate matters further.

Even Petitioner's description of this case highlights the challenges of a causation inquiry—proximate or otherwise. In the first paragraph of its Introduction, Petitioner's Brief describes what Bristol-Myers did not do: "It is undisputed that Bristol-Myers did not develop or manufacture Plavix in California; that the drug was not marketed, promoted, or distributed to respondents in California; and that respondents did not receive or fill their prescriptions, ingest the drug, or suffer any injuries in California." Pet. Br. 1. But Petitioner does not explain which of these nine activities would constitute causation—whether proximate or but-for—if it had in fact occurred in California. Determining which, if any, of these connections with a state is sufficiently causally connected to plaintiffs' injuries to justify personal jurisdiction would have to be hashed out in the lower courts over the coming years.

B. Even In Seemingly Simple Cases, Petitioner's Proposed Causation Rule Would Be Disruptive, Inefficient, And Unfair.

The lack of clarity and administrability that Petitioner's rule would generate is just the tip of the iceberg. Even in currently uncontroversial and simple cases, Petitioner's proposed causation rule

would mark a major departure from settled personal jurisdiction doctrine and would lead to disruptive, inefficient, and unfair results.

Consider the facts of *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980). In that case, the Robinson family was injured when the gas tank of their Audi exploded in a crash on an Oklahoma highway. The Robinsons sued Audi along with the importer, the wholesaler, and the dealer, alleging that the car had been defectively designed. The Court held that the Oklahoma courts lacked personal jurisdiction over the New York-based dealership where the Robinsons had bought the car and the regional wholesaler that sold the car to the dealership because they had not purposefully availed themselves of the privilege of conducting activities in Oklahoma. But "an objection to jurisdiction by the manufacturer [Audi] or national distributor [Volkswagen] would have been unavailing." *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 907 (2011) (Ginsburg, J., dissenting) (describing *World-Wide Volkswagen*). Indeed, the Court in *World-Wide Volkswagen* explained, "if the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others." 444 U.S. at 297.

Under Petitioner's proposed rule, however, Oklahoma may lack specific jurisdiction over the manufacturer, Audi, for injuries resulting from the explosion of the Robinsons' Audi in Oklahoma. Audi's marketing and sale of thousands of identical cars in Oklahoma would be neither a "but-for" nor "proximate" cause of the Robinsons' injuries. After all, they bought their Audi in New York. Indeed, the Robinsons' claims would be "exactly the same" if Audi had "no contacts" with Oklahoma at all, which Petitioner contends "alone is dispositive" of the jurisdictional question. Pet. Br. 47.

Petitioner's proposed causation rule goes even further. Imagine that the driver of the car that collided with the Robinsons, an Oklahoma resident with no out-of-state contacts, was also injured by the explosion. Petitioner's causation rule would also prohibit the Oklahoma driver from suing Audi in the Oklahoma courts because the particular product that caused his injury was brought into the state by a third party—the Robinsons. Again, Audi's purposeful and extensive marketing of identical products in Oklahoma would not be the "but for" or "proximate" cause of the Oklahoma driver's injuries. *See* Pet. Br. 47. The same no-jurisdiction result would obtain under Petitioner's test even if Audi conceded that personal jurisdiction would be reasonable in Oklahoma and even if Audi was subject to an ongoing suit in Oklahoma for the exact same defect.

This result makes little sense given the policies that Petitioner acknowledges underlie specific jurisdiction—"federalism, predictability, and fairness." Pet. Br. 17. There is no reason to think

that New York, where Audi sold the particular car that caused the injury, has any greater interest than Oklahoma in adjudicating the dispute between the Oklahoma driver and the car manufacturer that purposefully sold thousands of identical cars in Oklahoma. Indeed, a New York court would probably apply Oklahoma law to such a dispute. *See, e.g.*, *Edwards v. Erie Coach Lines Co.*, 952 N.E.2d 1033, 1037 (N.Y. 2011). Oklahoma would not "tread on" New York's "domain" in any meaningful sense by entertaining such a suit. *Contra* Pet. Br. 27 (quoting *Nicastro*, 564 U.S. at 899 (Ginsburg, J., dissenting)). Nor is a product liability suit in Oklahoma in any way unpredictable for Audi, given its extensive marketing of identical products in Oklahoma. No strict causal test is needed for a product manufacturer to be able to predict that it may be subject to suit for product defects in a state where it purposefully avails itself of the privilege of extensively marketing the allegedly defective product. For the same reason, a strict causal test is not necessary to ensure "fairness"; indeed, as this example illustrates, it can just as easily lead to unfairness—closing the doors to the Oklahoma courts to an Oklahoma plaintiff filing suit for injuries suffered in Oklahoma against a product manufacturer that purposefully avails itself of the privilege of selling those products in Oklahoma.

The problems with a strict causation rule multiply when joinder rules are taken into account. Assume that the Robinsons sued the Oklahoma driver for their injuries in state or federal court in Oklahoma—the only state likely to have personal jurisdiction over the driver. And assume that the

driver wanted to implead Audi for contribution, claiming that the collision would have been a fender bender if the gas tank had not been defective. Petitioner's proposed causation rule would prevent a single court from hearing all of these related claims together and would instead require the Oklahoma driver to seek contribution from Audi in a separate suit in New York (where Audi sold this particular car to the Robinsons) or Germany (where it is headquartered). To be sure, all of the potential parties to a dispute cannot always be joined in a single lawsuit, even if a single suit would be the most efficient. The bedrock principle is still "fair play and substantial justice," which requires purposeful availment. *World-Wide Volkswagen*, 444 U.S. at 297; *Int'l Shoe*, 326 U.S. at 316. So, for example, in *Nicastro*, the plaintiff might not be able to sue both his New Jersey employer and the British manufacturer of the machine that injured him in the same suit. But Petitioner's causation rule needlessly multiplies the instances where this is so, sacrificing efficiency without any offsetting benefit in terms of fairness, predictability, or interstate federalism.

C. Petitioner's Proposed Causation Rule Would Wreak Even Greater Havoc In Complex Litigation.

The inefficient, unfair, and unexpected results of Petitioner's proposed causation requirement would metastasize in the context of complex litigation. Consider another familiar Volkswagen litigation—the more recent one arising out of the "clean diesel" scandal. Volkswagen AG, a German corporation, admitted to U.S. government authorities that it had

rigged its so-called "clean diesel" cars to perform efficiently under testing conditions, even though the cars in fact could not pass U.S. environmental standards. Volkswagen's fraudulent scheme, which was conceived in and orchestrated from its German headquarters, harmed U.S. consumers throughout the United States. But because Volkswagen AG is incorporated and headquartered in Germany, it is unlikely there is general jurisdiction over Volkswagen anywhere in the United States. *See Daimler AG v. Bauman*, 134 S. Ct. 746, 761 (2014); *but cf. id.* at 761 n.19.

At a basic level, as suggested above, the application of Petitioner's causation rule to any plaintiff's claim against Volkswagen is not clear, especially because the defendant is a foreign corporation whose sales and marketing targeted the nationwide market through independent distributors or other third parties, like local dealerships. Likewise, if a plaintiff wanted to sue those local dealerships and *either* party wanted to join Volkswagen into that litigation, they would face challenges under Petitioner's causation requirement even if the court would otherwise deem Volkswagen to be subject to joinder.

The *Clean Diesel* litigation also demonstrates how the inefficient, unfair, and unexpected results of Petitioner's proposed causation requirement extend to federal claims and federal courts.[5] The federal

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[5] Petitioner and the United States seem to seek refuge in the proposition that federal courts would have a broader scope

of specific personal jurisdiction under the Fifth Amendment than state courts would have under the Fourteenth Amendment. This theory depends on a distinction between the Fifth and Fourteenth Amendments' due process requirements that this Court has never defined. *See, e.g., Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 102 n.5 (1987) (declining to consider the "constitutional issues raised by this theory"). The United States hints at its reasoning, however, in its brief in *BSNF Railway Co. v. Tyrrell*, No. 16-405, suggesting that "Congress's express constitutional power over and special competence in matters of interstate and foreign commerce . . . enables Congress, consistent with the Fifth Amendment, to provide for the exercise of federal judicial power in ways that have no analogue at the state level." U.S. Br., No. 16-405, at 32. While this Court may welcome Congress's guidance on issues such as the requisite minimum contacts with the United States that a defendant must have in order for a federal court to exercise personal jurisdiction over it, that guidance is surely not dispositive of the due process question, regardless of the extent of overlap between the Fifth and Fourteenth Amendment due process inquiries. *Cf. Asahi Metal Indus. Co. v. Cal. Superior Court*, 480 U.S. 102, 113 n.* (1987) ("We have no occasion here to determine whether Congress could, consistent with the Due Process Clause of the Fifth Amendment, authorize federal court personal jurisdiction over alien defendants based on the aggregate of *national* contacts, rather than on the contacts between the defendant and the State in which the federal court sits.").

This question is not briefed in this case, yet adopting Petitioner's causation rule without resolving it may draw into question the constitutionality of significant federal statutes that depend on nationwide service of process. *See, e.g.*, 15 U.S.C. § 22 (Clayton Act); 15 U.S.C. § 78aa(a) (Securities Exchange Act); 18 U.S.C. § 1965(a) (RICO); 18 U.S.C. § 2334 (Antiterrorism Act); 29 U.S.C. § 1132(e)(2) (ERISA); 31 U.S.C. § 3732(a) (False Claims Act). Should the Court wish to define the due-process boundaries of federal-court jurisdiction, we would respectfully encourage it to do so in a case squarely raising this complex question, and in which it is fully briefed.

court complaints in the *Clean Diesel* litigation alleged two principal federal claims: first, under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961–1968 (RICO), and second, under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.* (MMWA), colloquially known as the federal "Lemon Law." Consider first the MMWA claims. The MMWA does not include any provision for nationwide service of process, so like most federal statutes,[6] personal jurisdiction under the MMWA is defined by Federal Rule of Civil Procedure 4(k)(1)(A), which relies, in turn, on the scope of the jurisdictional power of the state where the federal court sits.

Under Petitioner's vision of specific jurisdiction, a litigation involving plaintiffs from different states, whose injuries were "caused" by Volkswagen's marketing and sales practices in whichever state they purchased their cars, would have to be split—separate actions in each state would be necessary, and the fact that they would present federal questions in federal courts would do nothing to fix this jurisdictional result. The resultant claim splitting would undermine the regulatory interest behind the MMWA (and countless other federal statutes), despite the fact that Volkswagen had

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[6] *See, e.g.*, 15 U.S.C. § 1681 (Fair Credit Reporting Act); 15 U.S.C. §§ 1692–1692p (Fair Debt Collection Practices Act); 29 U.S.C. §§ 201–219 (Fair Labor Standards Act); 29 U.S.C. §§ 2601–2654 (Family Medical Leave Act); 42 U.S.C. §§ 12101–12213 (Americans with Disabilities Act); 42 U.S.C. § 2000e *et seq.* (Title VII of the Civil Rights Act of 1964); 15 U.S.C. §§ 1051–1127 (Lanham Act).

ample contacts with many states through its marketing and sales efforts, and even though it would be foreseeable and reasonable to hale Volkswagen into court in those states.

Petitioner's causation requirement might create problems for the RICO claims as well. Although RICO includes a provision for nationwide service of process, 18 U.S.C. § 1965, it is not clear whether Petitioner's rule would allow plaintiffs bringing nationwide RICO claims to join their MMWA claims without establishing in-state causation. A prudent plaintiff worried about claim preclusion, therefore, might bring both the MMWA and RICO claims in her home jurisdiction, thus splitting up nationwide RICO suits, too.[7]

In short, Petitioner seems to be advocating cutting up nationwide lawsuits into 50 separate suits and dispersing such cases to multiple different states, regardless of the convenience to the courts or any of the litigants, including defendants themselves.[8] In so

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[7] The concern here is that the Petitioner's causation rule as described may interfere with the ability of a plaintiff to join related claims against the same defendant for which there would not be independent personal jurisdiction. *See* Restatement (Second) of Judgments § 9 (1982); 4A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 1069.7 (4th ed. 2017).

[8] The United States suggests that it is unconcerned if foreign defendants become harder to sue under Petitioner's causation rule because suits against foreign defendants can have "implications for the United States' international relations and trade interests." U.S. Br. 26. But Volkswagen likely appreciated the ability to resolve the expansive claims against it

doing, Petitioner's rule would also undermine the regulatory interests of Congress and the states.

Ironically, this result would conflict with Petitioner's asserted values and also with Congress's intent in the Class Action Fairness Act of 2005 (CAFA), Pub. L. 109-2, 119 Stat. 4 (2005). In CAFA litigation, defendants commonly criticize plaintiffs' splitting up cases as a deceptive mechanism for avoiding federal court litigation;[9] here, Petitioner seems to be arguing that Due Process *requires* such an approach, even while it concedes that California's exercise of personal jurisdiction in this case would

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as expeditiously as possible in a single jurisdiction. Moreover, the United States neglects to mention that the laws of other countries, including the European Union rules it cites, would likely permit pendent personal jurisdiction over BMS in a case like this one because co-defendant McKesson is headquartered in California. Parliament and Council Regulation 1215/2012, 2012 O.J. (L 351) art. 8 ("A person domiciled in a Member State may also be sued: . . . (1) where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings[.]").

[9] Indeed, in this litigation Petitioner first tried to aggregate claims in order to remove this litigation to federal court. *See* Resp. Br. 7–8. Courts are divided on whether plaintiffs may split claims in ways that avoid federal subject-matter jurisdiction under CAFA. *See, e.g., Freeman v. Blue Ridge Paper Prods., Inc.*, 551 F.3d 405, 407–09 (6th Cir. 2008) (forbidding such splitting); *Marple v. T-Mobile Central LLC*, 639 F.3d 1109, 1110–11 (8th Cir. 2011) (allowing it).

comport with the ultimate standard of "fair play and substantial justice." *Int'l Shoe*, 326 U.S. at 316.

D. Multidistrict Litigation Does Not Solve The Problems Petitioner's Proposed Causation Rule Would Create.

Both the Petitioner's and the Government's briefs suggest that any complications created by new, more restrictive limits on state-court jurisdiction are inconsequential because of the availability of multidistrict litigation (MDL), 28 U.S.C. § 1407, to consolidate pretrial proceedings in cases filed nationwide in a single federal district court. *See* Pet. Br. 51; U.S. Br. 30 & 31 n.4. This is incorrect. Not only could Congress repeal the MDL statute at any time, but even in its current form, MDL does not provide a cure-all to the inefficient scattering of litigation that would be made necessary by a rigid causation requirement for specific jurisdiction. And even in MDLs in which remand never occurs, consolidated pretrial proceedings, which include dispositive-motion practice, provide none of the protections to defendants and states thought to be central to personal jurisdiction doctrine.

First, MDL does not expand the number of forums in which a plaintiff may file a lawsuit. Although MDL does provide for transfer of cases properly filed in district courts to a single court for consolidated pretrial proceedings, the courts in which the cases were initially filed must have personal jurisdiction. 15 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 3866 (4th ed.

2017) ("A party who is not subject to personal jurisdiction in the original court cannot be validly served in the transferee district."). Moreover, MDL of course cannot reach cases that fall beyond the federal courts' subject-matter jurisdiction—such as the cases involved here, which are statutorily barred from removal because of the presence of McKesson, an in-state defendant. *Id.* Finally, as this Court has held, MDL consolidation is *only* for pretrial proceedings; the cases must be remanded to the courts in which they were filed for trial. *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 40 (1998). MDL therefore does nothing to ensure that those cases will not disperse across the country once pretrial proceedings conclude. In sum, MDL does not correct for the inefficiencies created by Petitioner's proposed rule.

Second, Petitioner's enthusiasm for MDL is curious given what it cites as the "purposes" of specific jurisdiction: "federalism, predictability, and fairness." Pet. Br. 17. With respect to either protecting defendants from geographic inconvenience *or* safeguarding individual states' interests in litigating cases arising from conduct occurring within their borders, MDL provides almost no protections. Although cases must be returned to the transferor districts for trial, during pretrial proceedings the judge presiding over the MDL has complete power, including overseeing discovery and dispositive-motion practice. Because the Judicial Panel on Multidistrict Litigation (JPML) can establish an MDL in any federal district, defendants may find themselves litigating all pretrial procedure in "thousands of claims brought by thousands of plaintiffs" anywhere

in the country. Pet. Br. 50; *see also In re FMC Corp. Patent Litig.*, 422 F. Supp. 1163, 1165 (J.P.M.L. 1976) ("Transfers under Section 1407 are simply not encumbered by considerations of in personam jurisdiction and venue.").

Thus, in mass-tort cases like the litigation here, the JPML has repeatedly suggested that virtually any federal district will be acceptable for an MDL. *See, e.g., In re Takata Airbag Prods. Liab. Litig.*, 84 F. Supp. 3d 1371, 1372 (J.P.M.L. 2015) ("The litigation is nationwide in scope. . . . No one district stands out as the geographic focal point."); *In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices, & Prods. Liab. Litig.*, 996 F. Supp. 2d 1380, 1383 (J.P.M.L. 2014) ("This litigation is nationwide in scope, and thus almost any district would be an appropriate forum."). Moreover, in cases of nationwide scope, the JPML has often selected districts having nothing to do with the defendants' geographic home, instead prioritizing features like the experience of the transferee judge or docket conditions in the transferee district. *See, e.g., In re Actos Prods. Liability Litig.*, 840 F. Supp. 2d 1356, 1356–57 (J.P.M.L. 2011) ("The allegations in this nationwide litigation do not have a strong connection to any particular district. . . . [C]entralization in the Western District of Louisiana permits the Panel to assign the litigation to an experienced judge who sits in a district in which no other multidistrict litigation is pending"). As a former Chairman of the JPML candidly explained, "location may be less of an overriding consideration, particularly where the litigation lacks a singular geographical focal point."

John G. Heyburn II, *A View from the Panel: Part of the Solution*, 82 TUL. L. REV. 2225, 2239 (2008).

There is, of course, an MDL involving Plavix litigation properly in federal court pending in the District of New Jersey, but the JPML could have placed that MDL in any federal district, regardless of where the component cases arose. Indeed, in the *Clean Diesel* case, the JPML selected the Northern District of California as the MDL district, not because the defendant was subject to general jurisdiction there, but because at the time of the MDL's creation thirty actions were already pending there, and the district judge selected had an especially accomplished record of success presiding over MDLs. *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, 148 F. Supp. 3d 1367, 1369–70 (J.P.M.L. 2015).

Ultimately, Petitioner's endorsement of MDL does not redeem the new restrictions it seeks to impose on the states. To the contrary, the combination of MDL and Petitioner's proposed causation rule may present the worst of both worlds, simultaneously imposing new inefficiencies while doing nothing to enhance protections to defendants ensnared in nationwide mass-tort litigation. If anything, Petitioner's endorsement of MDL should raise eyebrows: consolidation of nationwide litigation in any single federal district does not promote any of the "purposes behind the specific jurisdiction doctrine" cited in Petitioner's brief, namely, to ensure "fair notice as to where [defendants'] conduct would subject them to suit," to avoid "forc[ing] defendants to defend claims in a place where none of the conduct

giving rise to the suit occurred," and to "prohibit States from enforcing obligations that a defendant incurred exclusively through conduct undertaken in and directed at other States." Pet. Br. 12. MDL cannot solve the problems that Petitioner's proposed causation rule will create.

III. Petitioner's Proposed Causation Rule Is Unnecessary Because Numerous Doctrines Beyond "Minimum Contacts" Already Protect Defendants From State-Court Unfairness.

Not only will Petitioner's proposed causation rule produce inefficient, unfair, and unexpected results, but it is also unnecessary to protect defendants from abusive exercises of jurisdiction. In addition to the safeguards built into the minimum-contacts analysis, the "reasonableness" requirement and the *forum non conveniens* doctrine together provide a check against prohibitively inconvenient forums. And other doctrines, external to personal jurisdiction, further check extravagant exercises of state-court power. Taken together, these checks render Petitioner's novel and restrictive interpretation of minimum contacts unnecessary.

A. The "Reasonableness" Requirement And The *Forum Non Conveniens* Doctrine Provide A Check Against Prohibitively Inconvenient Forums.

To the extent that Petitioner is concerned that defendants may be forced to litigate in unfair or inconvenient geographic locations, no causation test is required. Although it is barely mentioned in

Petitioner's brief, the Due Process Clause already requires that exercises of personal jurisdiction be reasonable, even if minimum contacts exist. As this Court explained in *Burger King*: "Once it has been decided that a defendant purposefully established minimum contacts within the forum State, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with 'fair play and substantial justice.'" 471 U.S. at 476 (quoting *Int'l Shoe*, 326 U.S. at 320). This test mandates that courts assess the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several states in furthering substantive social policies. *Id.* at 477. The reasonableness requirement provides a potent check against unfair exercises of jurisdiction, particularly when the contacts between the defendant and the forum state are otherwise attenuated. In *Asahi*, for example, this Court found California's assertion of jurisdiction to be unreasonable in a case that ultimately involved two non-residents of California, in which California law was unlikely to apply, and where the burden on the defendant of litigating in California would be heavy. 480 U.S. at 116.

The existing reasonableness inquiry, in other words, will bar jurisdiction in many of the cases that Petitioner's causation rule purportedly targets. To bolster its argument, Petitioner relies on hypothetical cases in which, under current law, it would be

patently *unreasonable* for a state to exercise jurisdiction under the Court's set of factors, such as its fanciful suggestion that nationwide jurisdiction in California would be appropriate even if it had sold Plavix to only one customer in California. Pet. Br. 50.

Moreover, in cases where the location of the lawsuit is especially inconvenient, defendants may move to dismiss for *forum non conveniens*. *See Burger King*, 471 U.S. at 477 (noting that unfairness related to the plaintiff's choice of forum "usually may be accommodated through means short of finding jurisdiction unconstitutional"). States, including California, regularly dismiss or stay cases on the basis of *forum non conveniens* when a sister state's court will be more convenient for the parties and witnesses, particularly when neither party is from the forum state and forum law is unlikely to apply. *See, e.g.*, CAL. CODE CIV. PROC. § 410.30(a) ("When a court upon motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just."); *David v. Medtronic, Inc.*, 188 Cal. Rptr. 3d 103, 112 (Cal. Ct. App. 2015) (affirming dismissal on *forum non conveniens* grounds of products-liability claims by 36 non-Californians against non-California defendants); *Baltimore Football Club, Inc. v. Superior Court*, 171 Cal. App. 3d 352, 365 (Cal. Ct. App. 1985) (dismissing "claims of nonresidents under sister state laws against non-California defendants"). Notably, in this case, the trial court has not yet ruled on a motion to

sever the claims of the out-of-state plaintiffs, which Petitioner has preserved pending this appeal.[10]

B. Other Doctrines Also Check Extravagant Exercises Of State-Court Power.

It is all the more unnecessary to disrupt this Court's personal jurisdiction jurisprudence with Petitioner's proposed causation rule because other doctrines already protect defendants from excessive, extravagant, or imperialistic exercises of state-court power. These doctrines include state choice-of-law rules, which are themselves confined by constitutional restraints, and statutory bases for diversity jurisdiction and removal, which are best defined by Congress.

1. Limitations On State Choice Of Law Protect Defendants From Overly Aggressive Assertions Of State Power.

To the extent that Petitioner's concerns relate to application of forum law to claims occurring nationwide, such concerns are best handled as a

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[10] Def. Bristol-Myers Squibb Co.'s Mem. of Points and Authorities in Support of Mot. to Quash Service of Summons of Compl. for Lack of Personal Jurisdiction, July 9, 2013 ("In the alternative, if this motion to quash is denied, BMS separately will renew its motion to sever the claims of the Plaintiffs in these eight related suits and then to dismiss those brought by non-California residents on the grounds of *forum non conveniens*.").

matter of choice of law rather than personal jurisdiction. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 821 (1985) (holding that a state may not use assumption of jurisdiction as an added weight in the scale when considering the permissible limits on choice of substantive law); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 778 (1984) (explaining that choice of law can be litigated "after jurisdiction over respondent is established, and we do not think that such choice-of-law concerns should complicate or distort the jurisdictional inquiry"). A state adjudicating a nationwide set of claims against an out-of-state defendant may not constitutionally apply its own substantive law to every plaintiff's cause of action. *Shutts*, 472 U.S. at 821–23 (rejecting Kansas state court's application of forum law to nationwide class action when many claims arose outside of Kansas). Indeed, in order to constitutionally apply its own substantive law, "that State must have a significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair." *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 312–13 (1981).

Beyond constitutional limitations, even though their approaches may differ, all states follow choice-of-law rules crafted to select the most appropriate law and prevent forum shopping. *See Burger King*, 471 U.S. at 477 (noting that "the potential clash of the forum's law with the 'fundamental substantive social policies' of another State may be accommodated through application of the forum's choice-of-law rules"). California is no exception. Like most states, California has enacted a borrowing

statute that applies the statute-of-limitations period of the state where the cause of action arose. CAL. CODE CIV. PROC. § 361; ROBERT C. CASAD & LAURA J. HINES, JURISDICTION AND FORUM SELECTION § 2:25 (2d ed. 2016) ("Most states have enacted some statutory rules to limit the opportunities for this kind of forum shopping."). With respect to choice of law generally, California, which follows the governmental-interest approach to choosing law, has been restrained when it comes to applying forum law, regularly vindicating the interests of sister states by applying their laws in tort cases—even when the plaintiff is a California resident. *See, e.g.*, *McCann v. Foster Wheeler LLC*, 225 P.3d 516, 538 (Cal. 2010) (applying Oklahoma's more restrictive statute of repose to California resident's personal-injury claim against New York corporation when exposure to allegedly harmful asbestos occurred in Oklahoma); *Offshore Rental Co. v. Cont'l Oil Co.*, 583 P.2d 721, 729 (Cal. 1978) (applying Louisiana law to California plaintiff's claim against an out-of-state corporation for injuries occurring in Louisiana); *Castro v. Budget Rent-A-Car Sys., Inc.*, 65 Cal. Rptr. 3d 430, 443–44 (Cal. Ct. App. 2007) (applying Alabama law to a suit by a California resident injured in an automobile accident occurring in Alabama, citing the states' "respective spheres of lawmaking influence" (internal quotation marks omitted)).

2. Congress Is Best Situated To Address Bias Against Out-Of-State Corporate Defendants.

To the extent that Petitioner's concerns are about bias by state courts against out-of-state corporations,

personal jurisdiction doctrine is not the right vehicle for addressing those concerns. As this Court has reaffirmed in numerous contexts, state courts are presumptively fair and adequate. *See Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982) ("Minimal respect for the state processes, of course, precludes any presumption that the state courts will not safeguard federal constitutional rights." (emphasis omitted)); *Sumner v. Mata*, 449 U.S. 539, 549 (1981) ("State judges as well as federal judges swear allegiance to the Constitution of the United States, and there is no reason to think that because of their frequent differences of opinions as to how that document should be interpreted, all are not doing their mortal best to discharge their oath of office."); *Mondou v. New York, New Haven & Hartford R.R. Co.*, 223 U.S. 1, 58 (1912) ("We are not disposed to believe that the exercise of jurisdiction by the state courts will be attended by any appreciable inconvenience or confusion."). When a state court's procedures fall short, a litigant can challenge particular unfair provisions as deprivations of due process. *See, e.g.*, *Jones v. Flowers*, 547 U.S. 220, 239 (2006) (finding that Arkansas scheme of notice in tax-sale proceeding violated the Fourteenth Amendment); *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 421–22, 428 (2003) (rejecting state-court award of punitive damages in part because it was based on defendant's out-of-state conduct lawful in the state where it occurred).

More general concerns about potential state-court bias or unfairness are best addressed to the Congress, which can provide a remedy by calibrating

the diversity jurisdiction of the federal courts. *See* Class Action Fairness Act of 2005, S. Rep. 109-14, at 6 (Feb. 28, 2005) (noting the need for legislation to "prevent . . . state court provincialism against out-of-state defendants or a judicial failure to recognize the interests of other states in the litigation"). Should Petitioner prefer the MDL process to state-court jurisdiction, as it seems to, it could also ask Congress to broaden access to federal consolidation by allowing federal jurisdiction in multiparty cases on the basis of minimal diversity or by allowing removal by in-state defendants in cases that would be transferred to an MDL for pretrial proceedings. Amending the statute in this way would trade geographic predictability and state-court control of litigation in exchange for a single federal forum for pretrial proceedings. But any such exchange should be accomplished through legislation. In short, if the policy goal is to allocate cases between state and federal courts or to calibrate aggregate litigation, that is a matter for Congress, not the Constitution.

CONCLUSION

This Court should affirm the decision below.

Respectfully submitted,

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